COUNTY OF SUFFOLK

STEVE BELLONE
SUFFOLK COUNTY EXECUTIVE

DENNIS M. BROWN
COUNTY ATTORNEY

DEPARTMENT OF LAW

December 22, 2016

Hon. Joanna Seybert, U.S.D.J.
United States District Court, Eastern District of New York
Long Island Courthouse
100 Federal Plaza
Central Islip, New York 11722

Re: Hepworth v. DeMarco
CV 15-1493(JS)(GRB)

Dear Judge Seybert:

The Suffolk County Attorney's office represents defendants in this civil rights action pursuant to 42 U.S.C. §1983 brought by *pro se* plaintiff William Hepworth. Defendants submit this letter in opposition to plaintiff's motion for a bench trial (docket entry no. 75) and pursuant to the Court's Order of December 21, 2016.

Plaintiff included a demand for a jury trial in his complaint. Pursuant to Fed.R.Civ.P. Rule 38, defendants also included a demand for a jury trial in their answer. Our filing of a jury demand under Rule 38 triggered Rule 39(a), which provides that "[t]he trial on all issues so demanded must be by jury unless: (1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or (2) the court, on motion or on its own, finds that on some or all of those issues there is no federal right to a jury trial." Unquestionably, there is a right to a trial by jury in this §1983 action where the only relief sought is money damages. *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 119 S.Ct. 1624, 143 L.Ed.2d 882 (1999); See also *Messa v. Goord*, 652 F.3d 305, 308 (2d Cir. 2011)("In an action under 42 U.S.C. §1983, the parties have a right to a jury trial on the merits"). Since we do not waive our demand for a jury trial, there is no stipulation within the meaning of Rule 39(a)(2). Under these circumstances, defendants are entitled to a jury trial. Respectfully, we submit that the Court is without discretion to direct that the case be tried before the bench.

Accordingly, we request that plaintiff's motion be denied.

We thank the Court for its time and attention to this case.

Respectfully submitted,

Dennis M. Brown
Suffolk County Attorney

/s/ Arlene S. Zwilling
By: Arlene S. Zwilling
Assistant County Attorney

cc: William Hepworth, plaintiff *pro se*